

**PATHIRANA**  
**v.**  
**THE STATE**

COURT OF APPEAL.

SENEVIRATNE, J. (PRESIDENT, COURT OF APPEAL), B. E. DE SILVA, J. AND BANDARANAYAKA, J.

C. A. 541/85.

M. C. MOUNT LAVINIA CASE Nos. 27124 - 27128, 27298 - 27303, 27533 - 27538, 27640, 27767 - 27768, 27867 - 27870.

JUNE 27, 1985.

*Bail - Principles.*

The entire purpose of bail will be negated if the bail ordered is beyond the capacity of the suspect. Bail should be reasonably sufficient. Two factors are indicated in the term reasonably sufficient :

- (1) It must be reasonable bail in the circumstances.
- (2) The bail must not be excessive so as to prevent the suspect from furnishing bail - the bail order should not be a punitive order.

APPLICATION for bail.

*Ian Wickremāyake* for petitioner.

*Moses Fernando, S.S.C.* for State.

June 27, 1985.

**SENEVIRATNE, J. (President, C/A)**

Mr. Ian Wickremāyake supports this application for bail. He states that in this case the suspect Wimalaratne Pathirana was running an employment agency. He has taken money from several persons to obtain jobs in the Middle East. He had found employment for some but in the instances pertaining to these cases the prospective employees have failed to get employment due to visa problems in the country to which they were sent, i.e., Dubai. It is stated that this suspect has so far 33 cases against him. More are likely to be filed. The allegation is that of cheating in respect of the cases which are the subject matter of this application. In 11 cases the amounts taken by this suspect promising foreign employment amount to Rs. 614,500. In all these

cases the learned Magistrate has ordered the suspect to furnish cash bail totalling to Rs. 340,000. These papers do not indicate how much cash bail has been ordered in respect of each case. It is common for a suspect to have several cases filed against him, particularly in offences of this nature. When a suspect has several cases pending such as cheating, or theft, if the Court orders heavy bail in each case the result is that the suspect will not be able to furnish bail in any case. As in this instance the suspect will be on remand unable to furnish the bail ordered.

The entire purpose of ordering bail will be negated if the bail ordered is beyond the capacity of the suspect. The Magistrate should note that the principle pertaining to the ordering of bail is that the bail should not be excessive. If the bail is excessive, then the suspect is unable to furnish such bail and the result is the ordering of bail itself is a punishment which results in the suspect being in the remand jail. Another principle the Magistrate should observe is that when a person has several cases pending against him pertaining to like transactions the principle adopted so far by Court is to order reasonably sufficient bail in one case to ensure the attendance in Court of the suspect and to formally order bail in respect of the other cases. In the cases in which bail is formally ordered reference can be made to the number of the Magistrate's Court case in which reasonably sufficient bail has been ordered. By the term "reasonably sufficient" two factors are indicated :-

- (1) it must be reasonable bail in the circumstances, and
- (2) the bail must not be excessive so as to prevent the suspect from furnishing bail - the bail order thus becoming a punitive order.

Applying these principles to this case, we do not consider it is reasonable that any suspect in the circumstances of this suspect should be ordered to furnish cash bail in an aggregate sum of Rs. 340,000. This quantum of bail will necessarily frustrate the order.

Mr. Wickremanayake for suspect petitioner informs Court that in M. C. 27533 the suspect has been ordered to furnish cash bail in Rs. 10,000 with surety. This Court affirms the bail order made in case No. 27533 and makes further order to the Magistrate when bail is furnished to accept only two sureties approved by Court ; and sureties

must be ordered to furnish certificates from the Gramasevaka Niladari regarding their character and position in life and as to whether they are suitable persons to be accepted as surety.

In regard to the other cases which are the subject matter of this application, namely, 27124 - 27128 ; 27298 - 27303 ; 27534 - 27538 ; 27640, 27767 - 27768, 27867 - 27870 the Magistrate, Mt. Lavinia is ordered to enlarge the suspect on bond in Rs. 10,000 in each case with two sureties. In respect of these bonds the same conditions regarding sureties set out earlier in this order will apply.

**B. E. DE SILVA, J.** - I agree.

**BANDARANAYAKA, J.** - I agree.

*Bail reduced.*

---